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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-fourth session

PROVISIONAL SUMMARY RECORD OF THE SECOND PART (PUBLIC)*
OF THE 1039th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 17 March 1994, at 4.45 p.m.

Chairman: Mr. GARVALOV

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* The summary record of the first part (closed) of the meeting appears as
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The public meeting was called to order at 4.45 p.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 6) (continued)

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 8) (continued)

Establishment of an international tribunal to prosecute crimes against humanity (continued)

1. The CHAIRMAN drew attention to the recommendation of the working group on the establishment of an international tribunal to prosecute crimes against humanity, which read:

"The Committee on the Elimination of Racial Discrimination,

Alarmed over an increasing number of racially and ethnically motivated massacres and atrocities occurring in different regions of the world,

Convinced that the impunity of the perpetrators is a major factor contributing to the occurrence and recurrence of these crimes,

Convinced of the need to establish, as quickly as possible, an international tribunal with general jurisdiction to prosecute genocide, crimes against humanity, and grave breaches of the Geneva Conventions of 1949, and the Additional Protocols of 1977 thereto,

Taking into account the work already done on this question by the International Law Commission and the encouragement given in this regard by the General Assembly in its resolution 48/31,

Further taking into account Security Council resolution 827 (1993) of 25 May 1993 establishing an international tribunal for the purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of former Yugoslavia,

1. Considers it urgent to establish an international tribunal with general jurisdiction to prosecute genocide, crimes against humanity, including murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds and other inhumane acts directed against any civilian population and grave breaches of the Geneva Conventions of 1949, and the Additional Protocols of 1977 thereto;

2. Urges the Secretary-General to bring this recommendation to the attention of the competent bodies of the United Nations, including the Security Council;

3. Requests the High Commissioner for Human Rights to ensure that all relevant information pertaining to crimes referred to in paragraph 1 is systematically collected by the Centre for Human Rights so that it might be readily available to an international tribunal as soon as it is established."
2. Since he had been informed by several members of the Committee that a consensus on the recommendation was impossible, he would put it to the vote. In accordance with the rules of procedure, explanations of vote might be given before the voting commenced or after it had been completed.
3. Mr. ABOUL-NASR proposed that the recommendation should be adopted by consensus.
4. Mr. RECHETOV, speaking as a co-sponsor of the recommendation, called on the members of the Committee who were in favour of a vote to explain their position before the vote was taken so that any substantial objections might be taken into account. The Chairman had rightly spoken at an earlier meeting of the need to limit formal votes by the Committee to exceptional circumstances. He himself feared for the success of the tribunal being proposed if, at the outset, there was serious opposition to it in the Committee.
5. The CHAIRMAN said that he would be happy to see the recommendation adopted without a vote but the matter was in the hands of the Committee. He was merely following what he understood to be its wishes.
6. Mr. YUTZIS, speaking on a point of order, reminded the Chairman of Mr. Aboul-Nasr's proposal.
7. Mr. RECHETOV said he had heard no formal proposal that the recommendation should be put to the vote.
8. Mr. CHIGOVERA said he was surprised that a vote was to be taken without discussion on a matter of key importance with significant implications for the development of international law.
9. The CHAIRMAN said that the matter had in fact been before the Committee for some time. Nobody had suggested a substantive discussion of the recommendation by the working group. His understanding was that the members of the Committee were aware of the proposal and that they were ready to take action on it without discussion.
10. Mr. ABOUL-NASR said that Mr. Chigovera might explain his vote either before or after a decision was taken.
11. Mr. RECHETOV said he sympathized with Mr. Chigovera's surprise for he was both a newcomer to the Committee and a non-member of the working group. He could not recall any other time when a matter of such importance had been brought forward undiscussed for immediate decision at such a late hour. He considered

that the coordinator of the working group might introduce the recommendation very briefly, following which, in the absence of major objections, an attempt might be made to reach a decision without a vote. Alternatively, the procedure established for the reconsideration of proposals might be applied, with the floor being given to two speakers in favour and two opposing. At all events, he did not believe that a vote should be taken at once.

12. The CHAIRMAN said that Mr. Rechetov was referring to procedural motions, whereas he himself was, in accordance with the Committee's established practice, applying the rules concerning substantive proposals and inviting explanations of position before the Committee took a decision; additional explanations might be provided afterwards. He could not accept members' expressions of surprise at the present situation. Given the circumstances, however, did the Committee now wish to defer action?

13. Mr. SHAHI, speaking on a point of order, suggested that the Committee might simply consider the recommendation as adopted and then hear any members who wished to enter reservations.

14. Mr. LECHUGA HEVIA formally proposed that a vote should be taken on the recommendation.

15. The CHAIRMAN called on members who wished to speak in explanation of vote before the voting commenced.

16. Mr. VALENCIA RODRIGUEZ said that he would vote in favour of the recommendation, but would have preferred its substance to be identified more closely with the Convention by the inclusion of a sixth preambular paragraph, which would read:

"Having considered various reports submitted by States parties in accordance with article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination;"

17. Mr. CHIGOVERA said that he would vote against the establishment of the proposed international tribunal, firstly, because the matter was so important as to warrant serious consideration, especially with regard to its implications, and secondly, because he was by no means convinced that in making such a recommendation, the Committee would not be exceeding its mandate.

18. Mr. SONG Shuhua said that he would abstain in the vote because he believed that the recommendation went beyond the Committee's competence and that, in view of the present international situation, such a tribunal was hardly likely to succeed.

19. Mr. LECHUGA HEVIA said that he would vote against the recommendation, since he believed that it went beyond the Committee's competence and that now was not a good time to apply to the Security Council, which had taken other humanitarian initiatives without much success. It would even be dangerous to try to set up

such a tribunal, if only on humanitarian grounds, in view of the present international political situation and the state of affairs prevailing in the United Nations and in the Security Council itself.

20. Mr. ABOUL-NASR said that he would vote in favour of the recommendation because it was fully in keeping with article 9, paragraph 2, of the Convention.

21. Mr. AHMADU said that he would abstain in the vote. His view was that it would be better to try to broaden the powers of the international tribunal already established to deal with crimes in the former Yugoslavia to include violations of human rights and crimes committed elsewhere as well. He also feared that a tribunal such as the one recommended would concentrate on the prosecution of persons from third world countries.

22. Mr. WOLFRUM said that he would vote in favour of the recommendation, both for the reason given by Mr. Aboul-Nasr and because he believed the time was ripe to take the proposed step.

23. Mr. de GOUTTES said that he would vote in favour of the recommendation, on the understanding that nothing it contained must be interpreted as affecting the competence and functioning of the international tribunal set up for the punishment of war crimes and crimes against humanity in the former Yugoslavia.

24. Mr. RECHETOV said that he would vote in favour of the recommendation. Of course, the Committee alone could not solve the problem, but, with the recommendation, it would be taking a first step in an area that lay squarely within its terms of reference.

25. The post-Second World War Nürnberg Tribunal had been set up as an ad hoc court, so that it could not be said that the victors had been selectively judging the vanquished. The same ad hoc status had been conferred on the tribunal recently established in The Hague, which was designed mainly to try war crimes and crimes against humanity, but other crimes as well, and whose attention had rightly been drawn in the first place to the situation in the former Yugoslavia.

26. The effect of the proposal before the Committee would be to announce to the international community the beginning of what would be a complex process of establishing an international tribunal with general jurisdiction to prosecute war crimes and crimes against humanity.

27. Mr. SHAHI said that the establishment of an international criminal tribunal was always accompanied by fears that it could be used against a particular group of countries, but that risk must be offset by the integrity of the persons responsible for ensuring that one-sided applications or double standards did not make their appearance in the implementation of the laws, statutes and legislative acts of the international community. The recommendation fitted into the category of urgent procedures and had been sparked off by the Committee's consideration of the situations in Burundi and Rwanda. In connection with operative paragraph 2, he noted that a number of United Nations bodies had already been discussing the

question of establishing an international tribunal; some, including the International Law Commission, had been working for many years on the texts of corresponding legislation. In the absence of substantive details and in view of the decision to remove any specific reference to an international tribunal from the Committee's concluding observations on the situations in Burundi and Rwanda, he would abstain in the vote on the recommendation.

28. Mrs. SADIO ALY said that she would vote in favour of the recommendation. Although reconciliation was an important aspect of any conflict situation, an international tribunal would serve more generally as a preventive measure.

29. The CHAIRMAN invited the Committee to vote on the recommendation.

30. The recommendation was adopted by 11 votes to 2, with 3 abstentions.

31. The CHAIRMAN, speaking as a member of the Committee, said that he had voted in favour of the recommendation, since it was high time for the Committee to suggest the establishment of an international tribunal to deal with all violations of human rights, including those covered by the International Convention on the Elimination of All Forms of Racial Discrimination.

32. Mr. YUTZIS said he considered that the action just taken lay well within the purview of the Convention and the Committee's mandate. Moreover, the current international situation was such that any initiative that contributed to the establishment of a tribunal capable of doing away with or curtailing impunity would be useful.

33. He hoped that a tribunal such as the one proposed would not be used in a discriminatory or partial fashion, on behalf of or against any particular group, but simply to administer justice.

Question of a general recommendation concerning article 14 of the Convention

34. The CHAIRMAN recalled that Mr. Aboul-Nasr had raised the question whether the Committee should draft a general recommendation concerning article 14 of the Convention or whether requests to States parties which had not done so to make the declaration under that article should be issued specifically during the consideration of their periodic reports. Mr. Rechetov had made some procedural suggestions in that connection.

35. Mr. van BOVEN said that it was not an appropriate time to make a general recommendation. To do so would, in accordance with the Committee's practice concerning such recommendations, be to remove the opportunity of raising the matter specifically when dealing with individual States parties, taking particular circumstances into account. The matter required further thought, but he was in favour of Mr. Rechetov's suggestions, which allowed for flexibility.

36. Mr. AHMADU, Mr. LECHUGA HEVIA and Mr. de GOUTTES said that they endorsed those comments.

37. Mr. SONG Shuha said he shared the views of the previous speakers, noting that it was not for the Committee to impose its will on States parties. There must be mutual agreement on any joint commitments entered into.

38. The CHAIRMAN said he took it that the Committee was not in favour of a general recommendation concerning article 14, but would prefer requests to States parties to be dealt with on a case-by-case basis within the framework outlined by Mr. Rechetov.

39. It was so agreed.

Draft letter to the Foreign Ministers of new States in the territory of the former Soviet Union

40. Mr. RECHETOV, referring to the question of the position *vis-à-vis* the Convention of the new States now established in the territory of the former Soviet Union, said that, although some States had announced their intention of acceding to the Convention, eight of them, namely Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Lithuania, Tajikistan, Turkmenistan and Uzbekistan, had not yet done so. That meant that a very significant part of the territory of the former Soviet Union was not covered by the Convention, and that was a matter of great concern. He believed that there was an urgent need to draw attention to the question by addressing a letter to the States concerned, which he suggested should be drafted along the following lines:

"The International Convention on the Elimination of All Forms of Racial Discrimination is the oldest and most universal human rights treaty. To date 137 countries are member States to the Convention. The aim of the Convention is to put an end to racial discrimination. It is the Committee on the Elimination of Racial Discrimination (CERD) which monitors its implementation.

In the time of the existence of the Union of Soviet Socialist Republics, the implementation of the provisions of the International Convention on the Elimination of Racial Discrimination on the territory of your present State was reflected in the reports of the USSR to the CERD. After the dissolution of the USSR, there is, in the opinion of the Committee, an urgent need to confirm the applicability and compliance with the provisions of the CERD in respect of your State and accordingly to resume the dialogue with CERD by presenting reports on the implementation of the Convention in its territory."

41. Mr. WOLFRUM said that he fully shared Mr. Rechetov's concern. The Committee had repeatedly argued in favour of the universal application of the Convention. Although the Convention had formerly enjoyed wide acceptance, recent political developments had meant that fewer States were bound by it than had been the case in the past. The citizens of the former Soviet Union had had their rights protected under the Convention. If the Committee now did nothing, they would lose that protection, and that was entirely unacceptable. The Committee's role

should be to strive for an improvement in human rights standards, not to countenance a deterioration.

42. It might be argued on strictly legal grounds that successor States which claimed not to be bound by the Convention were contravening international law. However, the approach suggested by Mr. Rechetov was a far simpler solution and he believed that it should be accepted.

43. Mr. BANTON said he could accept the proposed text in principle, although there might be a need for drafting changes. He would suggest that the Chairman should be asked to hold further consultations on the matter; if those consultations had a satisfactory outcome, the letter could then be sent. However, if any difficulties arose, the Chairman could submit a new draft for consideration at the next session, with an explanatory note indicating what problems had been encountered.

44. The CHAIRMAN said he had been informed by the Secretary of the Committee that, in 1993, the Chairman of the Human Rights Committee had sent letters to the States concerned along similar lines.

45. Mr. de GOUTTES said that he fully supported Mr. Rechetov's proposal, which was of great importance. In view of the fact that a similar approach had already been adopted by the Human Rights Committee, he did not think there would be any need for prior consultations before sending a letter.

46. He wondered if it was in fact correct that the Convention was the "most universal" human rights treaty: he believed that the Convention on the Rights of the Child had been more widely ratified. A better wording might be "one of the most universal ...".

47. Mr. DIACONU said that, although he could agree that a letter should be sent, he believed that its drafting should be left to the Chairman. The letter should not take the form of a lecture to the States concerned about the Convention. If necessary, a copy of the text of the letter could be attached. The letter should ask the State to confirm not to the Committee, but to the Secretary-General of the United Nations, as depositary of the Convention, its compliance with the Convention's provisions.

48. He noted that the Commission on Human Rights had already adopted a similar approach and had requested successor States which had not yet done so to confirm to the depositaries concerned that they remained bound by the obligations that they had contracted in the human rights field.

49. Mr. AHMADU said that he supported Mr. Rechetov's proposal, but was not sure that the letter should be confined to successor States of the former Soviet Union. In Africa, Angola, Kenya, Guinea-Bissau, Sao Tome and Principe and the Republic of Comoros, among others, had not yet acceded to the Convention and they too should have their attention drawn to its importance.

50. He suggested that the Legal Adviser to the Secretary-General of the United Nations might be asked to confirm the legal position of successor States in respect of the Convention.

51. Mr. van BOVEN said that he too could support the proposal in principle, although he was not sure whether it was correct in procedural terms. Since the issue was one which affected not only the Committee's Convention, but all human rights conventions, it might be wise for it to be discussed first by the chairpersons of the human rights treaty bodies.

52. As had been pointed out, the Convention was not in fact the oldest or the most widely ratified human rights treaty: many other treaties in the human rights field had been adopted before 1965. Some changes to the wording of the draft letter would thus have to be made.

53. Mr. RECHETOV said he was aware that the drafting of his letter left something to be desired. However, he wished to stress the very real danger of the eruption of major ethnic conflicts in the States concerned. It was thus necessary for the Committee to take urgent action and it ought not to delay by consulting with other treaty bodies. In any event, experience had shown that those bodies took very little interest in the Committee's opinions.

54. All he was proposing was that the Committee should send a clear message to successor States, drawing their attention to the importance of accession to the Convention. The facts were clear: some 100 million people were now outside the scope of the Convention's protection. There was no need to ask for any legal advice in the matter.

55. He could not agree that an issue of such importance should be postponed until the Committee's August session. The Chairman could be entrusted with the task of drafting, but the letter should be sent out immediately after the current session.

56. The CHAIRMAN said he took it that it was the Committee's wish that he should write a letter on its behalf to the States concerned on the basis of Mr. Rechetov's proposed text, taking into account the views expressed during the discussion.

57. It was so agreed.

Proposal by an informal working group (CERD/C/44/Misc.9) to amend the Committee's rules of procedure with a view to implementing the working paper on prevention (CERD/C/1993/Misc.1/Rev.2)

58. Mr. de GOUTTES drew attention to a working paper (CERD/C/44/Misc.9) produced by an informal working group on amendments to the Committee's rules of procedure, which contained two suggested variants, the first for the amendment of existing rules and the second for the introduction of a new rule.

59. It would appear that there was as yet no clear consensus on either of the two alternatives. In particular, Mr. Aboul-Nasr had expressed reservations: his view had been that the necessary action could be taken on the basis of recommendations already adopted.

60. Accordingly, he would propose that consideration of the question be deferred until the Committee's next session.

61. It was so agreed.

The meeting rose at 6.05 p.m.